



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/168369

PRELIMINARY RECITALS

Pursuant to a petition filed August 31, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly denied the Petitioner's August 31, 2015 application for FoodShare benefits.

The record was held open to allow the agency to supplement the record. The agency provided CCAP print outs for cases [REDACTED] and [REDACTED] (Exhibit 6) and notices sent to the Petitioner on 6-19-09, 5-4-12, and 4-01-13 (Exhibits 3, 4 and 5, respectively)

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, HSPC, Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was previously convicted in circuit court of welfare fraud in two separate cases. She was convicted of one count in [REDACTED], which was filed on February 18, 1993, and she was convicted of two counts in case [REDACTED], which was filed on June 12, 1997. (Testimony of the Petitioner; Exhibit 6; Wis. Stats. 1993 Sec. 49.12)
3. On October 16, 1997, the agency sent the Petitioner a notice, under her former name, [REDACTED], advising her that she was permanently disqualified from receive FoodStamps, because she was found guilty of an intentional program violation, in a court of law. (Exhibit 2)
4. The Petitioner subsequently applied for and was denied FoodShare benefits on June 19, 2009, May 4, 2012 and April 1, 2013. All three times she was advised that she was not eligible because she committed a third intentional program violation. (Exhibits 3, 4 and 5)
5. On August 31, 2015, the Petitioner went to the agency to complete another application for FoodShare benefits. At that time, the agency informed her that she had been disqualified from the program. (Exhibit 2, Case Comments)
6. The Petitioner filed a request for fair hearing that was received on August 31, 2015. (Exhibit 1)
7. On September 3, 2015, the agency sent the Petitioner a written notice, again indicating that her application was denied because she previously committed a third intentional program violation. (CWW)

DISCUSSION

Under Federal Foodshare Regulations, 7 CFR § 273.16(b):

(1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

- (i) For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;
- (ii) For a period of twenty-four months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

The agency sent the Petitioner a notice in 1997, advising her that she had been permanently disqualified from the Food Stamp program, because she committed a third intentional program violation.

Petitioner argues that she only has two prior intentional program violations, not three, and as such, her period of disqualification should have expired. However, the Division of Hearings and Appeals does not have the authority to review that issue, at this time. Federal regulations specifically state that, "No further administrative appeal procedure exists after an adverse State level hearing..." 7 C.F.R. § 273.16(e)(8)(ii) As such, a disqualification penalty imposed after a state level hearing, including a conviction in criminal court, cannot be reversed by a subsequent fair hearing decision. Id.

If the Petitioner wants to litigate the issue of whether she committed two or three intentional program violations, she must file an appeal with a court of competent jurisdiction, such as the Milwaukee County Circuit Court.

The agency produced reliable documentation that the Petitioner was permanently disqualified from the Food Stamp program in 1997. As such, it is found that the agency correctly denied the Petitioner's August 31, 2015 application for benefits.

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner's August 31, 2015 application for benefits.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of October, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 20, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability